

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

2014 APR -1 P 2:54

ELIZABETH K. DALY,)
v.)
Plaintiff,)
v.)
COMMONWEALTH OF VIRGINIA,)
ANDREW T. COVEY,)
ARMON BROWN,)
JOHN CIELAKIE,)
LAUREN E. BLANKS,)
JONATHAN R. PINE,)
JOHN L. TAYLOR, and)
KEVIN D. WEATHERHOLTZ,)
Defendants.)
U.S. DISTRICT COURT
RICHMOND, VIRGINIA
Civil Action No. 3:14cv250

DEFENDANTS' JOINT NOTICE OF REMOVAL

Defendants, the Commonwealth of Virginia, Andrew T. Covey, Armon Brown, John Cielakie, Lauren E. Blanks, Jonathan R. Pine, John L. Taylor, and Kevin D. Weatherholtz, by counsel, pursuant to 28 U.S.C. §§ 1441, 1443, and 1446, hereby seek and notice the removal of this case to the United States District Court for the Eastern District of Virginia, Richmond Division from the Circuit Court of the City of Richmond, on the following grounds:

1. On March 25, 2014, Plaintiff filed a Complaint in the Circuit Court for the City of Richmond, Virginia. A copy of the Complaint is attached with Defendants' Exhibit No. 1.
2. The Complaint arises from an April 11, 2013, encounter between Plaintiff and law enforcement officers at the Barracks Road Shopping Center in Charlottesville, Virginia. Specifically, at approximately 10:10 that evening, agents of the Virginia Department of Alcoholic Beverage Control ("ABC") observed and suspected Plaintiff of the underage

possession of alcohol. Accordingly, two agents approached Plaintiff, who was seated with two friends in her vehicle, and identified themselves with badges as law enforcement officers. Allegedly panicked, Plaintiff did not cooperate, but instead fled the scene, striking two of the agents with her vehicle in the process. Thereafter, Plaintiff was arrested and charged with assault and battery and disregarding the orders of law enforcement. More than two months later, on June 27, 2013, the Commonwealth's Attorney *nolle prossed* the charges and prosecution.

3. From this brief encounter, Plaintiff filed the attached 47-page, 275-paragraph Complaint, alleging twelve federal and state law claims and seeking \$40 million in damages. The claims are asserted against the Defendants, the Commonwealth of Virginia ("Commonwealth") and the seven ABC agents present at the April 11, 2013, encounter: Andrew T. Covey ("Covey"), Armon Brown ("Brown"), John Cielakie ("Cielakie"), Lauren E. Blanks ("Blanks"), Jonathan R. Pine ("Pine"), John L. Taylor ("Taylor"), and Kevin D. Weatherholtz ("Weatherholtz"). Plaintiff centrally and predominately claims a violation of her rights under the Fourth Amendment to the United States Constitution.

4. Ten claims are brought against the agents. Against Covey, Brown, Blanks, and Taylor, Plaintiff attempts to allege a claim of malicious prosecution, pursuant to 42 U.S.C. § 1983 ("Count I"), and a conspiracy to commit malicious prosecution, pursuant to 42 U.S.C. § 1985 ("Count II"). (Compl., ¶¶ 139-73.) She also attempts to allege a claim of common law malicious prosecution ("Count IV"). (*Id.*, ¶¶ 185-99.) Against Covey and Taylor, Plaintiff attempts to allege a claim of false arrest, pursuant to 42 U.S.C. § 1983 ("Count III"). (*Id.*, ¶¶ 174-84.) Finally, against all of the agents, Plaintiff attempts to allege a claim of assault and battery ("Count VII," "Count VIII," "Count IX," "Count X," "Count XI," and "Count XII"). (*Id.*, ¶¶ 224-75.) Plaintiff attempts to allege, centrally and predominately, a violation of her rights

under the Fourth Amendment to the United States Constitution to be free from an unlawful seizure, arrest, prosecution, and assault and battery without probable cause and justification. (See *id.*, ¶¶ 1, 2, 141, 155-57, 159, 167, 172-74, 176, 178-85, 195, 224, 226, 228, 233, 235, 237, 241, 243, 245, 251, 255, 260, 262, 268, 270.)

5. The remaining two claims are brought against the Commonwealth. Plaintiff attempts to allege claims of an "unlawful custom or practice" ("Count V") and a "failure to train" ("Count VI"), pursuant to 42 U.S.C. § 1983. (Compl., ¶¶ 200-23.) Citing the April 11, 2013, encounter, she likewise claims the Commonwealth violated her rights under the Fourth Amendment to the United States Constitution to be free from an unlawful seizure, arrest, prosecution, and assault and battery without probable cause and justification. (See *id.*, ¶¶ 1, 2, 200, 209-10, 212, 221-22.)

6. This Court has original jurisdiction over Plaintiff's federal question claims and supplemental jurisdiction over her state law claims, all of which arise out of the April 11, 2013, encounter and all of which involve the same case or controversy. See 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."); 28 U.S.C. § 1343(a) (providing for original jurisdiction of the federal district courts in cases alleging, *inter alia*, a conspiracy under Title 42 and a violation of constitutional or other federally-granted rights); 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy. . . .").

7. Removal is also proper, pursuant to 28 U.S.C. § 1443, as the Complaint contains allegations of the denial of federally assured rights by persons acting under color of authority of law. (See e.g., Compl., ¶¶ 140, 158, 175, 201, 213.)

8. On March 26, 2014, by agreement with Plaintiff's counsel, undersigned counsel accepted and received a copy of the Complaint for all named Defendants without formal service.

9. Accordingly, Defendants, by counsel, timely file this Joint Notice of Removal "within 30 days after the receipt by the defendants, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b).

10. Pursuant to 28 U.S.C. § 1446(a), Defendants, by counsel, attach hereto Defendants' Exhibit No. 1, which includes a copy of the initial Complaint and all process, pleadings, and orders served upon them in the Circuit Court of the City of Richmond, Virginia case. Defendants have also attached to Defendants' Exhibit No. 1 a copy of an attorney-issued subpoena *duces tecum*, requesting documentation from the Virginia State Police regarding the encounter, which Plaintiff served on Defendants prior to this Joint Notice of Removal. Defendants have filed no motions or pleadings in the City of Richmond Circuit Court. The City of Richmond, Virginia Circuit Court has entered no orders in this case.

11. Pursuant to 28 U.S.C. § 1446(b)(2), all Defendants jointly request, consent to, and authorize undersigned counsel to remove this case, on their behalf, to this Court from the City of Richmond, Virginia Circuit Court.

12. Additionally, Defendants, by counsel, are providing written notice of the filing of this Joint Notice of Removal to all adverse parties, and specifically here, Plaintiff. 28 U.S.C.

§ 1446(d). They also file a copy of this Joint Notice of Removal with the Clerk of the Circuit Court of the City of Richmond, Virginia. *Id.*; *see* Def.s' Ex. No. 1.

13. Pursuant to 28 U.S.C. § 1446(a), Defendants, by counsel, file this Joint Notice of Removal in the Richmond Division of the United States District Court for the Eastern District of Virginia, which is the district court of the United States for the district and division within which the state court action is pending. *See* 28 U.S.C. § 1441(a) ("any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.")

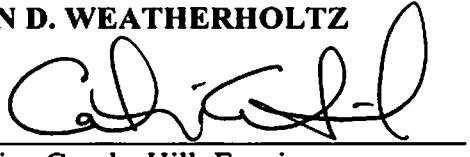
14. Pursuant to Federal Rule of Civil Procedure 81(c)(2), Defendants intend to file in this Court timely Motions to Dismiss and Memoranda in Support.

15. Finally, undersigned counsel represents, subject to Federal Rule of Civil Procedure 11, that the facts in this Joint Notice of Removal are true and correct to the best of her knowledge, information, and belief, and she signs this Joint Notice of Removal with that representation.

WHEREFORE Defendants, by counsel, seek and pray the removal of this case to the United States District Court for the Eastern District of Virginia, Richmond Division, and that the Circuit Court for the City of Richmond, Virginia hold no further proceedings in connection with this case.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA,
ANDREW T. COVEY, ARMON BROWN,
JOHN CIELAKIE, LAUREN E. BLANKS,
JONATHAN R. PINE, JOHN L. TAYLOR, and
KEVIN D. WEATHERHOLTZ

By: 
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**Counsel of Record for the Defendants*

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of April, 2014, I filed a copy of this Joint Notice of Removal with the Clerk of this Court by hand-delivery, and that I also mailed the Joint Notice of Removal by U.S. Mail to the following individuals:

James B. Thorsen, Esquire
John K. Honey, Esquire
Marchant, Thorsen, Honey, Baldwin & Meyer, LLP
5600 Grove Avenue
Richmond, Virginia 23226

I also certify that on this 7th day of April, 2014, I filed a copy of this Joint Notice of Removal with the Circuit Court of the City of Richmond, Virginia at:

Edward F. Jewett, Clerk of Court
Circuit Court of the City of Richmond
400 North Ninth Street
John Marshall Courts Building
Richmond, Virginia 23219

By: 
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